

MINUTES

Ad Hoc Committee on Probate Law and Procedure

Administrative Office of the Courts

450 South State Street

Salt Lake City, Utah 84114-0241

June 20, 2008 - 12:00p.m.

ATTENDEES

Kerry Chlarson

Mary Jane Ciccarello

Judge George Harmond

Justice Richard Howe

Marianne O'Brien

Kathy Thyfault

EXCUSED

Kent Alderman

Judge Reese Hanson

Maureen Henry

Steve Mikita

Julie Rigby

Judge Gary Stott

STAFF

Diana Pollock

Tim Shea

I. WELCOME AND APPROVAL OF MINUTES

Judge Harmond welcomed the committee members to the meeting. Mary Jane Ciccarello made a motion to accept the minutes of the May 16, 2008 meeting. Kerry Chlarson seconded the motion. The motion carried unanimously.

II. EMERGENCY APPOINTMENTS

Tim Shea stated that he modeled the proposed emergency appointment statute after a temporary restraining order in a civil case. If an emergency appointment is requested, a petition for a regular appointment and a motion to appoint on an emergency basis need to be filed. The committee discussed the following issues on the proposed emergency appointment statute.

- The court may appoint an emergency guardian for a period not to exceed 60 days.
- The court may remove an emergency guardian at any time.
- Emergency appointments are automatically terminated after 60 days.
- The existing problem of people asking for emergency appointments without an underlying petition for guardianship.
- The court may dispense with notice and the hearing on the emergency appointment if it finds that the respondent will be substantially harmed before a hearing can be held. But the hearing must be held as soon as possible thereafter.
- The signing judge will require some type of evidence of the emergency before an order is entered.

- The guardian's authority is limited to what the judge directs in the order.
- The need for immediate attention for freezing bank accounts.

After discussion the committee agreed to leave the language as Tim Shea drafted and to include the language of addressing the emergency role. Under the new model the emergency order itself needs to be more specific.

Temporary Substitute Appointment

This situation occurs when the guardian has already been appointed and is unable to do the work for some reason. Under this process the court can appoint someone to take the guardian's place on a temporary basis. The duration of the appointment is for 180 days and requires a hearing. The committee's discussion:

- Before the 180 days ends, the judge needs to decide whether to make the temporary appointment permanent or appoint someone else.
- Unless otherwise ordered by the court, a temporary substitute guardian has the same authority and duties in the previous order of appointment.
- Since incapacity has already been decided, the only issue is the propriety of the appointment.

The committee agreed with the temporary substitute appointment provisions.

Successor or additional guardian or conservator

Tim Shea stated that this draft is based on the 1997 Uniform Act. Basically, the court is permitted to appoint more than one guardian. A co-guardian or a successor guardian can come into their authority based on identified conditions without a new process. The co-guardian or successor guardian would require new guardianship letters, but could get them without a new hearing. The committee agreed with the proposed language that Mr. Shea drafted.

Proceedings after Appointment

These proceedings are on behalf of the ward or someone interested in the ward's welfare after an appointment has been made. These provisions would not be in the guardianship or conservatorship sections, but in a section that applies to both. The topics are quite varied and include asking for an increase or decrease in the bond, removal and appointment of a successor, directions from the court, resignation, termination, etc.

III. BACKGROUND CHECKS OF PROFESSIONAL GUARDIANS

Mary Jane Ciccarello distributed information of what other states are doing to regulate guardians. Ms. Ciccarello stated that Alaska and Washington are the most regulated states. Basically there are two categories. First, there is an entity regulating professional guardians. Second, the court is requiring disclosure of arrests, convictions and the like by private guardians.

- To be certified by a national guardianship organization requires a disclosure statement of the professional guardian that is notarized.
- DOPL requires a background check.
- The committee favors some type of regulation of the professional guardians.
- It is strongly recommend that the courts do not take on this obligation.
- Responsibility should be with DOPL to regulate the profession.
- Disclosure could be a required by the court.
- Person applying to be a professional would pay for the background check.
- Try to avoid additional expenses for family guardians.
- Let the judge weigh how important a person's disclosure is.
- Recommend that discussions with DOPL take place.

Tim Shea will draft text for the committee to review.

IV. CONSERVATORSHIPS

Tim Shea indicated that the committee had developed some substantial changes in the area of guardianships, but had not yet addresses conservatorships. He asked the committee whether there was anything that we had already done that should not apply to conservators. Committee discussion:

- Should the proposed ward be incapacitated in order to have a conservator?
- The petitioner often is appointed as guardian and conservator.
- Maintain the separation of the roles while urging people to pay attention that the roles are different.
- Should the committee's role be limited to guardianships?
- The suggestion that guardian/conservator be treated as one.
- Under unlimited guardianship, the guardian still would not have the authority of a conservator.
- Concern about the confusion that exists in the current system.
- The current Probate Code, which was adopted in 1975, distinguishes between a guardian and a conservator. Before that the offices were more similar.
- It is difficult for clerks to distinguish between a guardian and a conservator.
- The necessity for a conservator when there are a lot of assets.

The committee will address this issue at its next meeting and invite others who have more experience with conservatorships.

The meeting adjourned at 2:00 p.m.